

JS-6

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

LOS ANGELES WATERKEEPER, a
California non-profit association,

Plaintiff,

v.

KELTERITE CORPORATION, a
California corporation; KELTERITE
COMPANY, LLC, a California
corporation,

Defendants.

Case No.: 2:24-cv-02130 - DSF (KESx)

CONSENT DECREE

CONSENT DECREE

WHEREAS, Plaintiff Los Angeles Waterkeeper (“LA Waterkeeper” or “Plaintiff”) is a 501(c)(3) non-profit public benefit corporation organized under the laws of the State of California, with its main office in Los Angeles, California;

WHEREAS, LA Waterkeeper is dedicated to the preservation, protection and defense of the surface, ground, coastal and ocean waters of Los Angeles County from all sources of pollution and degradation;

WHEREAS, Defendants KELTERITE CORPORATION and KELTERITE COMPANY, LLC (collectively “Defendants”) own and operate a facility located across the following multiple contiguous properties / addresses: 12231 Pangborn, Ave., 12328, 12320, 12314, and 12240 Woodruff Ave., and 9750 Seaaca Street, Downey, CA 90241, under Waste Discharger Identification number 4 19I022159 (“Facility”);

WHEREAS, the Facility’s industrial activities consist of producing asphalt, among other things. The Facility is categorized under Standard Industrial Classification (“SIC”) Codes 1429 (Crushed and Broken Rock, Not Elsewhere Classified); 2951 (Asphalt Paving Mixtures and Blocks);

WHEREAS, storm water discharges associated with industrial activity at the Facility are regulated by the National Pollutant Discharge Elimination System (“NPDES”) General Permit No. CAS000001 [State Water Resources Control Board], Water Quality Order 2014-0057-DWQ, as amended by Order Nos. 2015-0122-DWQ and 2018-0028-DWQ incorporating: 1) Federal Sufficiently Sensitive Test Method Ruling; 2) Total Maximum Daily Load Implementation Requirements; and 3) Statewide Compliance Options Incentivizing On-Site or Regional Storm Water Capture and Use, at the Facility (“General Permit” or “Permit”)¹, and the Federal

¹ Any reference to the “General Permit” or “Permit” shall be to the then-effective version, regardless of whether such changes are the result of amendments, revisions, reissuance, or similar modification of material terms. Any reference in this Consent Decree to specific sections or subsections of the General Permit that are moved, modified, or otherwise

1 Water Pollution Control Act, 33 U.S.C. §§ 1251, *et seq.* (“Clean Water Act” or
2 “CWA”), Sections 301(a) and 402, 33 U.S.C. §§ 1311(a), 1342;

3 **WHEREAS**, Defendants’ operations at the Facility result in discharges of
4 pollutants into waters of the United States and are regulated by the Clean Water Act
5 Sections 301(a) and 402. 33 U.S.C. §§ 1311(a), 1342;

6 **WHEREAS**, the General Permit requires all permittees, including Defendants,
7 to comply with, *inter alia*, the following mandates: (1) develop and implement a
8 storm water pollution prevention plan and a storm water monitoring implementation
9 plan, (2) control pollutant discharges using, as applicable, best available technology
10 economically achievable or best conventional pollutant control technology to prevent
11 or reduce pollutants through the development and application of Best Management
12 Practices, which must be detailed in and timely updated in the SWPPP, (3) reduce
13 and eliminate discharges necessary to comply with any and all applicable Water
14 Quality Standards, and (4) implement a monitoring and reporting program, including
15 the MIP, designed to assess compliance with the Permit;

16 **WHEREAS**, on January 12, 2024, Plaintiff issued a notice of intent to file suit
17 (“60-Day Notice Letter”) to Defendants, their registered agent, the Administrator of
18 the United States Environmental Protection Agency (“EPA”), the Executive Director
19 of the State Water Resources Control Board (“State Board”), the Executive Director
20 Los Angeles Regional Water Quality Control Board (“Regional Board”), and the
21 Regional Administrator of EPA Region IX, alleging violations of the Clean Water
22 Act and the General Permit;

23 **WHEREAS**, on March 15, 2024, LA Waterkeeper filed a complaint against
24 Defendants in the Central District of California (“Court”), Civil Case No. 2:24-cv-
25 02130 - CAS (KESx) (“Complaint”);

26 _____
27 changed in a subsequent version of the General Permit shall be to such subsequent reference(s) as if set forth herein,
28 *e.g.*, the current §XI.B.6.c may be renumbered as §XI.B.7.c, combined into the current §XI.B.6.d, or split into a new
§XI.B.6.c and §XI.B.6.d.

1 **WHEREAS**, Plaintiff's Complaint alleged violations of the General Permit
2 and the Clean Water Act for Defendants' discharges of pollutants into storm drains
3 and surface waters, including San Gabriel River, the San Gabriel River Estuary,
4 Alamitos Bay, San Pedro Bay, and the Pacific Ocean (collectively, "Receiving
5 Waters");

6 **WHEREAS**, Plaintiff and Defendants (collectively, "Settling Parties" or
7 "Parties") agree that it is in their mutual interest to enter into a Consent Decree
8 setting forth terms and conditions appropriate to resolving the allegations set forth in
9 the 60-Day Notice Letter and Complaint without further proceedings;

10 **WHEREAS**, all actions taken by Defendants pursuant to this Consent Decree
11 shall be made in compliance with all applicable federal, state and local laws, rules
12 and regulations.

13 **NOW, THEREFORE, IT IS HEREBY STIPULATED BETWEEN THE**
14 **SETTLING PARTIES AND ORDERED AND DECREED BY THE COURT AS**
15 **FOLLOWS:**

16 1. The Court has jurisdiction over the subject matter of this action pursuant
17 to Section 505(a)(1)(A) of the CWA, 33 U.S.C. § 1365(a)(1)(A).

18 2. Venue is appropriate in the Central District Court pursuant to Section
19 505(c)(1) of the CWA, 33 U.S.C. § 1365(c)(1), because the Facility at which the
20 alleged violations are taking place is located within this District.

21 3. The Complaint states a claim upon which relief may be granted against
22 Defendants pursuant to Section 505 of the CWA, 33 U.S.C. § 1365.

23 4. LA Waterkeeper has standing to bring this action.

24 5. The Court shall retain jurisdiction over this action for purposes of
25 interpreting, modifying, or enforcing the terms of this Consent Decree, or as long
26 thereafter as necessary for the Court to resolve any motion to enforce this Consent
27 Decree, but only regarding issues raised within the Term (as defined below) of this
28 Consent Decree.

I. OBJECTIVES

6. It is the express purpose of the Settling Parties through this Consent Decree to further the objectives of the Clean Water Act, and to resolve all issues alleged by LA Waterkeeper in its 60-Day Notice Letter and Complaint. These objectives include compliance with the provisions of this Consent Decree, compliance with all terms and conditions of the General Permit, and compliance with all applicable sections of the CWA.

7. In light of these objectives and as set forth fully below, Defendants agrees to comply with the provisions of this Consent Decree, terms and conditions of the General Permit, and all applicable sections of the CWA at the Facility.

II. AGENCY REVIEW AND DEFINITIONS

A. AGENCY REVIEW OF CONSENT DECREE

8. Agency Review. Plaintiff shall submit this Consent Decree to the United States Department of Justice and the EPA (the “Federal Agencies”) for agency review consistent with 40 C.F.R. § 135.5. The agency review period expires forty-five (45) calendar days after receipt by the Federal Agencies, as evidenced by certified return receipts, or upon the date that the Federal Agencies provide a no objection letter, whichever is earlier (“Agency Review Period”). In the event that the Federal Agencies object to entry of this Consent Decree or to any portion of this Consent Decree, the Parties agree to meet and confer to attempt to resolve the issue(s) raised by the Federal Agencies. If the Parties are unable to resolve any issue(s) raised by the Federal Agencies in their comments, the Parties agree to expeditiously seek a settlement conference with the assigned Magistrate Judge to resolve any issue(s).

9. Court Notice. Plaintiff shall notify the Court of the receipt date by the Federal Agencies, as required by 40 C.F.R. § 135.5, in order to coordinate the Court’s calendar with the 45-day review period.

10. Entry of Consent Decree. Following the expiration of the Agency Review Period, Plaintiff shall submit the Consent Decree to the Court for entry.

B. DEFINITIONS

11. Unless otherwise expressly defined herein, terms used in this Consent Decree which are defined in the CWA or in regulations or rules promulgated under the CWA have the meaning assigned to them in the statutes or regulations or rules. Whenever terms listed below are used in this Consent Decree, whether or not capitalized, the following definitions apply:

- a. “BAT” means the Best Available Technology Economically Achievable.
- b. “BCT” means the Best Conventional Pollutant Control Technology, and collectively with BAT is referred to herein as “BAT/BCT.”
- c. “BMPs” means Best Management Practices as defined in Attachment C (Glossary) of the General Permit.
- d. “Consent Decree” means this Consent Decree and any attachments or documents incorporated by reference.
- e. “Day” means a calendar day. In computing any period of time under this Consent Decree, where the last day of such period is a Saturday, Sunday, or Federal or State Holiday, the period runs until the close of business on the next day that is not a Saturday, Sunday, or Federal or State Holiday.
- f. “Discharge Point” means each discharge location designated in the then-current SWPPP for the Facility.
- g. “Effective Date” means the effective date of this Consent Decree, which shall be the date of full execution by the Parties.
- h. “Entry Date” means the day this Consent Decree is approved and entered by the Court.
- i. “Forecasted Rain Event” means a forecasted rain event with a fifty percent (50%) or greater probability of precipitation above 0.1

1 inches at least twenty four (24) hours prior to the rain event as
2 determined by the National Oceanic and Atmospheric
3 Administration (<http://forecast.weather.gov/>) for “90650,
4 Bellflower, CA, USA.”²

- 5 j. “MIP” means a Monitoring Implementation Plan.
- 6 k. “PPT” means Pollution Prevention Team.
- 7 l. “Qualified Industrial Storm Water Practitioner” or “QISP” shall
8 have the definition set forth in Section IX.A.1 of the General
9 Permit.
- 10 m. “Qualifying Storm Event” or “QSE” shall have the definition set
11 forth in Section XI.B.1 of the General Permit.
- 12 n. “Reporting Year” means the period from July 1 of a given
13 calendar year to June 30 of the following calendar year.
- 14 o. “SMARTS” means the California State Water Resources Control
15 Board’s Stormwater Multiple Application and Report Tracking
16 System.
- 17 p. “SWPPP” means a Storm Water Pollution Prevention Plan.
- 18 q. “Term” means the period between the Effective Date and the
19 “Termination Date.”
- 20 r. “Termination Date” means the latest of:
- 21 i. June 30 following two (2) years from the completion of the
22 Onsite Drainage and Infiltration BMPs set forth in
23 Paragraph 16 below;
- 24 ii. seven (7) days from the conclusion of any proceeding or
25 process to enforce the Consent Decree initiated prior to
26 June 30 following five (5) years after the Effective Date; or
- 27

28 ² Located at <https://forecast.weather.gov/MapClick.php?lat=33.9021&lon=-118.1086>.

1 iii. seven (7) days from Defendants' completion of all
2 payments and other affirmative duties required by this
3 Consent Decree.

4 s. "Wet Season" means the period beginning October 1st of any
5 given calendar year and ending May 31th of the following
6 calendar year.

7 **III. COMMITMENTS OF THE SETTLING PARTIES**

8 **A. STORM WATER POLLUTION CONTROL BEST MANAGEMENT PRACTICES**

9 12. Non-Storm Water Discharge Prohibition. Any unauthorized non-storm
10 water discharge (as defined in the General Permit), if not identified and corrected
11 pursuant to the Action Plan requirements described in Paragraph 25 below shall be a
12 violation of this Consent Decree.

13 13. Current and Additional Best Management Practices. At all times,
14 Defendants shall implement BMPs identified in its SWPPP and BMPs described
15 herein, and shall develop and implement additional BMPs as necessary to comply
16 with the provisions of this Consent Decree and the General Permit, including but not
17 limited to those (1) necessary to comply with BAT/BCT; and (2) the General
18 Permit's Receiving Water Limitations, which require that discharges from the
19 Facility "not cause or contribute to an exceedance of any applicable water quality
20 standards" contained in a Statewide Water Quality Control Plan or the applicable
21 Regional Board's Basin Plan.

22 14. Rain Gauge/Sensor. Defendants shall install and maintain an electronic
23 rain gauge or sensor at the Facility within ten (10) days of the Effective Date. The
24 rain gauge/sensor shall be capable of measuring precipitation down to at least 0.1
25 inches, and record start/stop times and hourly precipitation for each rain event.
26 During the Term, Defendants shall collect data using the gauge/sensor for all
27 precipitation events to the nearest 0.1 inch, including start/stop times. Data from the
28

1 rain gauge/sensor shall be conclusive of precipitation quantities and timing for
2 purposes of this Consent Decree.

3 15. Structural and Non-Structural BMPs for the Facility. As soon as possible
4 but no later than thirty (30) days of the Effective Date, Defendants shall develop and
5 implement the following BMPs at the Facility:

- 6 a. Patch, pave, or otherwise resurface areas of significantly degraded
7 pavement or asphalt throughout the Facility;
- 8 b. Implement a sweeping program using a regenerative air or
9 vacuum sweeper certified by the South Coast Air Quality
10 Management District with the capacity to collect and retain PM-10
11 (10 μ m) particles on all paved areas at least once per month
12 outside of the Wet Season, once per week during the Wet Season,
13 and within twenty-four (24) hours prior to a Forecasted Rain
14 Event, and employ hand sweeping and/or vacuuming on the same
15 schedule in areas a mechanical sweeper cannot access;
- 16 c. Employ and secure new filtration socks to reduce sediments,
17 metals, and organic materials at all locations where storm water
18 discharges from the Facility. Defendants shall employ one of the
19 following filtration sock media products, unless data is presented
20 for Plaintiff's review that an alternative is expected to perform
21 better: (1) BiocharBASIC, or (2) BiocharPEAT (available from
22 StormwaterBIOCHAR, <https://stormwaterbiochar.com/>).
23 Defendants shall configure such socks to achieve optimal contact
24 time with storm water prior to discharge, *i.e.*, in multiple layers
25 and/or overlapping formations with no gaps beneath them and or
26 between the sections. Defendants shall, thereafter, employ and
27 secure new socks in the same manner annually prior to the start of
28 the Wet Season, no later than September 15th;

- d. During the Wet Season, as necessary, replace the wattles/filters/socks when degraded or ineffective, including without limitation when there are rips, tears or other visual damage, and/or sampling data demonstrating the wattles/filters/socks are not sufficiently reducing pollutant concentrations;
- e. Institute a formal pre-rain protocol throughout the Wet Season to be implemented within twenty-four (24) hours prior to a Forecasted Rain Event, involving inspection of any filters and wattles deployed at the site, removal of any exposed waste material to the fullest extent practicable, and relocation of uncontained or uncovered debris bins and trash cans under cover; and
- f. Within twenty-four (24) hours prior to a Forecasted Rain Event, cover all, debris and scrap bins, and trash cans with tarps, lids, or other coverings sufficient to prevent exposure to rainfall, including without limitation those stored outside and where roof protection is inadequate, or otherwise move them into a covered structure adequate to prevent exposure to rainfall.
- g. Institute an equipment and vehicle maintenance program that ensures:
 - i. no maintenance activities occur outdoors during wet weather, unless such maintenance is required for safe operation of the Facility, *e.g.*, the forklift breaks down in a location that prevents ingress/egress;
 - ii. maintenance activities occur only in designated work areas or beneath covered maintenance areas; and

1 iii. when maintenance activities must be performed outdoors,
2 action shall be taken to immediately contain, capture, and
3 clean up any discharge or spills of waste fluids to the
4 ground.

5 h. Within seven (7) days of each of the BMPs in Paragraphs 15.a.,
6 15.b., and 15.c. above being initially implemented, Defendants
7 shall confirm to LA Waterkeeper in writing, with photographs,
8 that such BMP has been implemented as set forth above.

9 16. Onsite Drainage and Infiltration BMPs.

- 10 a. Within one hundred twenty (120) days of the Effective Date,
11 Defendants will prepare a drainage and infiltration BMP
12 improvement report (“Infiltration Report”) which, at minimum,
13 includes the following:
- 14 i. Results of percolation testing at each location where
15 Defendants will infiltrate stormwater runoff generated from
16 Defendants’ industrial operations.
 - 17 ii. An estimate of runoff volumes that would need to be
18 captured and infiltrated to significantly reduce the potential
19 for offsite discharges.
 - 20 iii. Dimensions and infiltration capacity of the existing Cultec
21 infiltration basin at the DA-2.
 - 22 iv. Dimensions and capacity of proposed infiltration BMPs at
23 the DA-1 and DA-4 drainage areas.
 - 24 v. Installation of a lysimeter to confirm, to Plaintiff’s
25 satisfaction, sufficiency of pretreatment and lack of impact
26 of infiltration on groundwater.
 - 27 vi. The dimensions of a capture sump and storage tank to
28 capture runoff from the truck bed release lubrication area or

alternatively, plans for regrading the facility entrance and truck bed release lubrication area to eliminate runoff from this drainage area.

vii. Conceptual plans for a bioswale within the DA-2 drainage area.

viii. A water balance model which demonstrates that the proposed infiltration and related BMP improvements will significantly reduce the potential for offsite discharges.

b. LA Waterkeeper shall have thirty (30) days upon receipt of Defendants' complete Infiltration Report to provide Defendants with comments. Upon completion of LA Waterkeeper's 30-day review period, if no comments are provided, approval is assumed and the Infiltration Report shall be considered final. Within thirty (30) days of receiving LA Waterkeeper's proposed revisions to an Infiltration Report, Defendants shall consider each of LA Waterkeeper's recommended revisions and accept them or justify in writing why any comment is not incorporated, and shall provide LA Waterkeeper with a final Infiltration Report.

c. Any LA Waterkeeper comments that Defendants do not disagree with shall be implemented. Any disputes as to the adequacy of the Infiltration Report shall be resolved pursuant to the dispute resolution provisions of this Consent Decree, set out in Section IV below. Disputes regarding the adequacy of any particular BMP in the Infiltration Report shall not impact the schedule for implementing any other BMPs set forth in the Infiltration Report.

d. Defendants shall have one hundred twenty (120) days from when the Infiltration Report becomes final to complete construction, installation, and implementation of all BMPs set forth in the

1 Infiltration Report. This time frame can be extended as needed
2 based upon appropriate justification, and Plaintiffs agree to not
3 unreasonably deny any requested extension.

- 4 e. Within seven (7) days of the construction, installation, and
5 implementation of all BMPs set forth in the Infiltration Report
6 being completed and the system being fully operational,
7 Defendants shall confirm to LA Waterkeeper in writing certified
8 by a QISP, with photographs, that construction, installation, and
9 implementation of the BMPs has been completed and that the
10 system is fully operational.

11 17. Within six (6) months of the Effective Date:

- 12 a. Defendants shall implement a weekly inspection and removal of
13 any significant dust accumulation on the site that is a result of
14 Defendant's operations. Specific locations to be inspected include
15 the asphalt loading area, conveyors, asphalt piles, the sound
16 control berm, all truck unloading areas, the crusher and the hopper
17 and system moving material from the hopper to the crusher,
18 backup raw material piles in the southwest part of the Facility, all
19 silos, and the screen/shaker and any other relevant locations in
20 response to a reasonable inquiry from an external party.
21 Defendants will inspect not only accumulation of dust but also
22 observe any transport of dust away from the deposition point,
23 especially off-site or toward a property boundary.
- 24 b. In the event that Defendants observe significant off-site airborne
25 or dust emissions as a result of Defendant's operations from any
26 deposition point, Defendants will submit an Action Plan pursuant
27 to Paragraph 25 below.
28

1 **B. SAMPLING AT THE FACILITY**

2 18. Defendants shall develop a monitoring program consistent with the
3 General Permit. During the Term, Defendants shall collect samples of storm water
4 discharge from each Discharge Point from at least four (4) Qualifying Storm Events
5 (two Qualifying Storm Events during the first half of the Reporting Year and two
6 Qualifying Storm Events during the second half of the Reporting Year). Defendants
7 will use best efforts to capture the first two Qualifying Storm Events in each half of
8 the Reporting Year. Such sampling shall take place as soon as possible within the
9 four (4) hour period required by the General Permit § XI.B.5. If, prior to the
10 implementation of the infiltration BMPs, Defendants would have been required to
11 collect samples during a rain event pursuant to this Consent Decree had such rain
12 event produced a discharge, but Defendants did not collect samples because such rain
13 event did not produce a discharge, then Defendants shall document the inability to
14 sample by taking photographs during the rain event of each Discharge Point from
15 which no discharge occurred. Defendants shall submit such photographs to LA
16 Waterkeeper by email, along with rain gauge/sensor data for the date of such rain
17 event, within ten (10) days of a written request for such records by LA Waterkeeper.

18 19. Sampling Parameters. All samples collected pursuant to this Consent
19 Decree shall be analyzed, at minimum, for the parameters listed in Table 1. Should
20 Defendants conduct sampling for any additional parameters that are listed in 40
21 C.F.R. § 131.38 and/or in the General Permit as a result of changed operations, a
22 revised pollutant source assessment, or a new mandate from a regulatory agency,
23 such parameter shall be incorporated into this Consent Decree as if listed in Table 1
24 for all purposes, including any Action Plan requirements (as defined below).
25 Defendants shall immediately notify LA Waterkeeper of its intent to conduct
26 sampling for any such additional parameters and the Parties shall meet and confer
27 regarding the applicable Table 1 limit for such purposes within ten (10) days of such
28 notification.

20. Laboratory and Holding Time. Except for pH samples, Defendants shall deliver all samples to a California-certified environmental laboratory for analysis within allowable hold times, pursuant to 40 C.F.R. Part 136. Analysis of pH will be completed onsite using a portable instrument that is calibrated and used according to the manufacturer's instructions.

21. Detection Limit. Defendants shall request that the laboratory use analytical methods adequate to detect the individual pollutants at or below the values specified in the General Permit and Table 1 below.

22. Reporting. Defendants shall provide complete laboratory results of all samples collected at the Facility to SMARTS in accordance with the General Permit and shall provide copies to LA Waterkeeper within ten (10) days of receiving the laboratory report with the results.

C. REDUCTION OF POLLUTANTS IN DISCHARGES

23. Table 1 Numeric Limits. Defendants shall develop and implement BMPs for storm water discharges from the Facility that reduce pollutant concentrations to levels below those in Table 1.

TABLE 1³

Parameter	Numeric Limit	Source of Limit
Zinc	0.26 mg/L	NAL
Copper	0.0332 mg/L	NAL
Aluminum	0.75 mg/L	NAL
Iron	1.0 mg/L	NAL
TSS	100 mg/L	NAL
O&G	15 mg/L	NAL
pH	<6 or > 9 SU	NAL

³The numeric limits listed in Table 1 are for reference only, and the Table 1 limit for each parameter shall be the then-effective limit provided by the applicable source, e.g., if the NAL for zinc is either increased to 0.3 mg/L or lowered to 0.20 mg/L, such new NAL, and not 0.26 mg/L, shall be used as the Table 1 limit for the purposes of this Consent Decree as if set forth herein. If the source of a limit in Table 1 is revised to no longer provide a limit for a given parameter, e.g., the NAL for iron being removed, then the Parties shall meet and confer regarding the applicable Table 1 limit for such parameter for the purposes of this Consent Decree.

1 24. Table 1 Exceedances. An “Exceedance” of Table 1 is defined as follows:
2 where the concentration of any pollutant in any storm water sample from the Facility
3 exceeds any numeric limit contained in Table 1.

4 25. Action Plan. As of the Effective Date, and for the remainder of the
5 Term, if Defendants have an unauthorized non-storm water discharge in violation of
6 Paragraph 12, Defendants observe off-site significant airborne dust emissions from
7 any deposition point pursuant to Paragraph 17 above, or storm water samples
8 demonstrate an Exceedance as defined above,⁴ Defendants shall prepare and submit
9 to LA Waterkeeper a plan for reducing and/or eliminating the relevant discharge of
10 pollutants for the Facility, remedying the off-site airborne dust emissions, and/or
11 achieving compliance with the non-storm water discharge prohibition (“Action
12 Plan”). However, an Action Plan shall not be required when the BMPs for the
13 applicable unauthorized non-storm water discharge, off-site significant airborne dust
14 emissions, or Exceedance for the same pollutant in the same drainage area were
15 addressed in a previous Action Plan in the same Reporting Year and such BMPs were
16 not yet implemented as of the date of the applicable unauthorized non-storm water
17 discharge, off-site significant airborne dust emissions, or QSE sampling that led to
18 the Exceedance.⁵ The complete Action Plan shall be submitted to LA Waterkeeper
19 within forty five (45) days of the unauthorized non-storm water discharge,
20 observation of the off-site significant airborne dust emissions, or the receipt of the
21 laboratory report demonstrating the Exceedance, as applicable.

22 a. Action Plan Requirements. Each complete Action Plan submitted
23 shall include at a minimum: (1) the identification of the
24 _____

25 ⁴ Provided that until the Onsite Drainage and Infiltration BMPs set forth in Paragraph 16 above are fully installed, any
26 Action Plan based on Exceedances shall only be required to identify interim BMPs, and shall only be required to the
27 extent any interim BMPs exist that would improve concentrations of the applicable pollutants.

28 ⁵ For clarity, an Action Plan based on an Exceedance shall be required if: (i) the applicable Exceedance is demonstrated
for a pollutant and/or in a drainage area not addressed in a previous Action Plan in the same Reporting Year; and/or (2)
when the applicable Exceedance is demonstrated for the same pollutant in the same drainage area as in a previous
Action Plan in the same Reporting Year and the BMPs in the previous Action Plan were fully implemented before the
applicable QSE that led to the Exceedance was sampled.

1 pollutant(s) discharged in excess of the numeric limit(s), the
2 significant off-site airborne dust emissions observed, and/or the
3 applicable unauthorized non-storm water discharge; (2) an
4 assessment of the source of each pollutant exceedance, significant
5 off-site airborne transport dust emissions, and/or applicable
6 unauthorized non-storm water discharge; (3) the identification of
7 additional BMPs that shall be implemented to achieve compliance
8 with the numeric limit(s) and/or unauthorized non-storm water
9 discharge prohibition, or to remedy the significant off-site
10 airborne transport dust emissions observed, as well as the design
11 plans and calculations of these additional BMPs; and (4) time
12 schedules for implementation of the proposed BMPs. The time
13 schedule(s) for implementation shall ensure that all BMPs are
14 implemented as soon as possible, but in no event later than ninety
15 (90) days following the submission of the Action Plan, unless a
16 later implementation date is mutually agreed upon by the Settling
17 Parties. Within seven (7) days of each of the BMPs set forth in the
18 Action Plan being implemented, Defendants shall confirm to LA
19 Waterkeeper in writing, with photographs, that such BMP has
20 been implemented as set forth in the Action Plan.

- 21 b. Action Plan Proposed BMPs. The following BMPs should
22 generally be evaluated for inclusion in Action Plans to attain the
23 Table 1 levels in the Facility's storm water discharges:
- 24 i. Hydrologic Controls. Installation of additional berms or
25 equivalent structural controls necessary to reduce or prevent
26 storm water from flowing off site other than through the
27 engineered storm water conveyance system or storm water
28 retention or treatment facilities.

- 1 ii. Sweeping. The increased/more frequent use of sweepers
2 and manual sweeping in otherwise inaccessible areas.
- 3 iii. Treatment Systems. Installing additional components or
4 systems, or otherwise improving, an advanced storm water
5 treatment system, or making changes to the operation and
6 maintenance protocols for such system, to provide more
7 effective filtration treatment of storm water prior to
8 discharge.
- 9 iv. Evaluation of Existing BMPs. Replacing, rehabilitating, or
10 eliminating existing BMPs, taking into account the age of
11 the BMPs involved or employed, the engineering aspect of
12 the application of various BMPs, and any adverse
13 environmental impact of the BMPs.
- 14 c. Action Plan Review. LA Waterkeeper shall have thirty (30) days
15 upon receipt of Defendants' complete Action Plan to provide
16 Defendants with comments. Within fourteen (14) days of
17 receiving LA Waterkeeper's proposed revisions to an Action Plan,
18 Defendants shall consider each of LA Waterkeeper's
19 recommended revisions and accept them or justify in writing why
20 any comment is not incorporated. Action Plan(s) developed and
21 implemented pursuant to this Consent Decree are an obligation of
22 this Consent Decree. Any disputes as to the adequacy of an Action
23 Plan shall be resolved pursuant to the dispute resolution
24 provisions of this Consent Decree, set out in Section IV below.
25 Disputes regarding the adequacy of a particular BMP shall not
26 impact the schedule for implementing any other BMP set forth in
27 the Action Plan.

d. Defendants shall revise the then-current SWPPP to reflect the changes required by the Action Plan, as set forth in Paragraph 30.b.i. below.

e. Action Plan Payments. Defendants shall pay Five Thousand Dollars (\$5,000.00) each time an Action Plan is submitted to LA Waterkeeper. Payments are due at the same time that the applicable Action Plan is submitted and shall be made to “Los Angeles Waterkeeper” via certified mail, return receipt requested to Los Angeles Waterkeeper, c/o Barak Kamelgard, 360 E 2nd Street Suite 250, Los Angeles, CA 90012. Failure to submit a payment as required under this Paragraph will constitute a breach of the Consent Decree.

D. VISUAL OBSERVATIONS

26. Storm Water Discharge Observations. During the Term, appropriately trained staff of Defendants shall conduct visual observations during the Facility’s operating hours during every rain event. Such inspections shall comply with all requirements of Section XI.A.2 of the General Permit, and any successor thereof.

27. Monthly Visual Observations. During the Term, appropriately trained staff of Defendants shall conduct monthly non-storm water visual observations of the Facility. Such inspections shall comply with all requirements of Section XI.A.1 of the General Permit, and any successor thereof. Such monitoring shall include outfalls, Discharge Points, outdoor industrial equipment and storage areas, outdoor industrial activities areas, BMPs, and all other potential sources of industrial pollutants. All Discharge Points shall also be inspected for accumulation of dust, sediment, sand, grit, oily substances, oily sheens upon any standing water, and other materials associated with operations at the Facility. During the Wet Season, such inspections shall further include observations of all storm water BMPs that are used only during the Wet Season at the Facility to ensure that operational BMPs are being

1 implemented, structural BMPs are in good condition or working order, and that
2 BMPs have been effective in producing clean conditions at the Facility. Such
3 inspections shall further include observation as to whether there are any non-storm
4 water discharges from the Facility.

5 28. Visual Observations Records. Defendants shall maintain observation
6 records, including representative photographs, to document compliance with
7 Paragraphs 26 and 27. Such records shall include, but not be limited to, the persons
8 who completed the inspection, the date of the inspection, and notes sufficient to
9 describe the completed activity and all observations thereof, including but not limited
10 to: (i) whether BMPs are in an proper, working condition; (ii) whether any repair,
11 replacement, or operation and maintenance is needed for any BMPs; (iii) other
12 conditions that have the potential to lead to pollutant loading in storm water
13 discharges; and (iv) photographs of all the foregoing. Defendants shall provide LA
14 Waterkeeper with a copy of those records within seven (7) days of receipt of a written
15 request from LA Waterkeeper for those records.

16 29. Employee Training Program. Within thirty (30) days of the Effective
17 Date, Defendants shall develop and implement an employee training program that
18 meets the following requirements and ensures (1) that there is a sufficient number of
19 employees at the Facility designated to achieve compliance with the General Permit
20 and this Consent Decree (“Designated Employees”), and (2) that these Designated
21 Employees are properly trained to perform the activities required by the General
22 Permit and this Consent Decree (“Training Program”):

- 23 a. Materials. Training materials should include, at minimum, a
24 detailed Training Manual or Standard Operating Procedure,
25 including drawings and diagrams where appropriate, for reference
26 and use by Defendants’ personnel to ensure effective
27 implementation of all BMPs at the Facility;
28

- 1 b. Language. The training and training materials shall be available
2 and offered in the language(s) in which relevant employees are
3 fluent. If necessary, Defendants shall provide a translator or
4 translators at all trainings where such translation is likely to
5 improve staff comprehension of the Training Program and
6 improve compliance with this Consent Decree and the General
7 Permit;
- 8 c. Training Frequency. Training shall be provided by a QISP
9 familiar with the requirements of this Consent Decree and the
10 General Permit, and shall be repeated as necessary to ensure that
11 all relevant employees are familiar with the requirements of this
12 Consent Decree, the Permit, and the Facility's SWPPP. All
13 relevant new staff shall receive this training before assuming
14 responsibilities for implementing the SWPPP;
- 15 d. Sampling Training. Defendants shall designate an adequate
16 number of employees necessary to collect storm water samples as
17 required by this Consent Decree, including training to ensure
18 samples are properly collected, stored, and submitted to a certified
19 laboratory;
- 20 e. Visual Observation Training. Defendants shall provide training on
21 how and when to properly conduct visual observations to
22 Designated Employees;
- 23 f. Non-Storm Water Discharge Training. Defendants shall train all
24 Designated Employees at the Facility on the General Permit's
25 prohibition of non-storm water discharges, so that Designated
26 Employees know what non-storm water discharges are and how to
27 detect and prevent non-storm water discharges;
28

- 1 g. Employees. All Designated Employees at the Facility shall
2 participate in the Training Program annually. New Designated
3 Employees shall participate in the Training Program within thirty
4 (30) days of their hiring date; and
- 5 h. Records. Defendants shall maintain training records to document
6 compliance with this Paragraph and shall provide LA Waterkeeper
7 with a copy of these records within seven (7) days of receipt of a
8 written request.

9 30. SWPPP Revisions.

- 10 a. Initial SWPPP Revisions. Defendants shall amend the Facility's
11 SWPPP to incorporate the requirements in this Consent Decree
12 and comply with the General Permit and submit the complete,
13 updated SWPPP to LA Waterkeeper within thirty (30) days of the
14 Effective Date for LA Waterkeeper's review and comment. The
15 complete, updated SWPPP shall contain, at a minimum, the
16 following elements:
- 17 i. A revised pollutant source assessment, including all
18 elements required by section X.G of the General Permit as
19 well as assessments of the potential for the Facility's storm
20 water discharges to contain pollutants for which the
21 Receiving Waters are 303(d) listed and/or have Total
22 Maximum Daily Loads;
- 23 ii. A detailed narrative description and assessment of each
24 industrial activity with the potential to impact storm water
25 quality occurring at the Facility as required by section X.G
26 of the General Permit;
- 27
28

- iii. Descriptions of all BMPs in accordance with section X.H.4 of the General Permit, including without limitation BMPs required by this Consent Decree;
 - iv. A set of site maps that comply with section X.E of the General Permit and provisions of this Consent Decree;
 - v. A MIP as required by sections XI and X.I of the General Permit;
 - vi. A designation (by position/title) of employees responsible for carrying out storm water management, monitoring, sampling and SWPPP implementation, e.g., visual inspection of each specific area, monitoring each specific BMP, sampling, etc.; and
 - vii. A Training Program as described above in Paragraph 29.
- b. Additional SWPPP Revisions.
- i. Within thirty (30) days after approval of any Action Plan by LA Waterkeeper (or resolution pursuant to Dispute Resolution), Defendants shall revise the then-current SWPPP to reflect the changes required by the Action Plan and submit the complete, updated SWPPP to LA Waterkeeper for LA Waterkeeper's review and comment.
 - ii. Within thirty (30) days after any changes in industrial activities, sources of industrial pollutants, changes to Discharge Points, or changes to sections of the SWPPP identified in the SWPPP as requiring a SWPPP revision (including but not limited to, changes in Facility contacts or PPT members, changes or additions of BMPs, or changes in or additions of industrial activities that impact storm water discharge), Defendants shall revise the then-current SWPPP

1 to reflect such changes and submit the complete, updated
2 SWPPP to LA Waterkeeper for LA Waterkeeper's review
3 and comment.

4 c. Review of SWPPP. For any SWPPP updates pursuant to
5 Paragraphs 30.a. and 30.b., LA Waterkeeper shall have thirty (30)
6 days upon receipt of Defendants' complete SWPPP to provide
7 Defendants with comments. Within thirty (30) days of receiving
8 LA Waterkeeper's comments and proposed changes to the
9 SWPPP, Defendants shall consider each of the comments and
10 proposed changes and either accept them or justify in writing why
11 a change is not incorporated. The Parties agree to work in good
12 faith to resolve any disputes with respect to the SWPPP, and any
13 remaining disputes will be resolved through timely initiation of
14 the dispute resolution procedures in Section IV below. Following
15 its incorporation of proposed modification or additions (if any)
16 into each revised SWPPP, Defendants shall upload the revised
17 SWPPP to SMARTS.

18 **E. COMPLIANCE MONITORING AND REPORTING**

19 31. LA Waterkeeper may conduct one annual site inspection ("Site
20 Inspection") during each Reporting Year during the Term for the purpose of ensuring
21 compliance with this Consent Decree and the General Permit. In the event of a
22 dispute regarding Defendants' compliance with this Consent Decree, and provided a
23 Site Inspection would be relevant to resolving the Parties' dispute, the Parties agree to
24 meet and confer regarding an additional Site Inspection at Plaintiff's request. Plaintiff
25 shall not unreasonably request, and Defendants shall not unreasonably deny, one
26 additional Site Inspection. Any Site Inspection shall occur during normal business
27 hours, and LA Waterkeeper will provide Defendants with at least forty-eight (48)
28 hours' notice prior to a Site Inspection. For any Site Inspection requested to occur in

1 wet weather, Plaintiff shall be entitled to adjust timing or reschedule during normal
2 business hours in the event the forecast changes and anticipated precipitation appears
3 unlikely, and thus frustrates the purpose of visiting the Facility in wet weather. Notice
4 will be provided by electronic mail to the individual(s) designated below at Paragraph
5 59. During the Wet Weather inspection, Plaintiff may request that Defendants collect
6 a sample of industrial storm water discharge from the Facility's designated industrial
7 discharge point(s) referenced in its SWPPP, to the extent that such discharges are
8 occurring. Defendants shall collect the sample and provide a split sample to LA
9 Waterkeeper. LA Waterkeeper's representative(s) may observe the split sample(s)
10 being collected by Defendants' representative. LA Waterkeeper shall be permitted to
11 take photographs or video recording during any Site Inspection.

12 32. Document Provision. During the Term, Defendants shall notify and
13 submit documents to LA Waterkeeper as follows:

- 14 a. Defendants shall copy LA Waterkeeper, by electronic mail to the
15 individual(s) designated below at Paragraph 59, on all compliance
16 documents, monitoring and/or sampling data, written
17 communications and/or correspondences, or any documents
18 related to storm water quality at the Facility that are submitted to
19 the Regional Board, and the State Board;
- 20 b. Within three (3) business days of receipt by Defendants, send to
21 LA Waterkeeper, by electronic mail to the individual(s)
22 designated below at Paragraph 59, any compliance document,
23 inspection report, written communication and/or correspondence,
24 or any document related to storm water quality at the Facility
25 received by Defendants from the Regional Board, the State Board,
26 and/or any state or local agency, county, municipality.

27 33. Compliance Monitoring. Defendants agree to partially defray costs
28 associated with Plaintiff's monitoring of Defendants' compliance with this Consent

Decree during the Term by paying Ten Thousand Dollars (\$10,000.00) for the the first year of this Consent Decree, One Thousand Dollars (\$1,000) for each year until the long-term infiltration project is in place, and Three Thousand Dollars (\$3,000) for each year thereafter. In the event that, pursuant to Paragraph 31, there is an additional Site Inspection in a given year to resolve a dispute, Defendants shall reimburse LA Waterkeeper an additional Two Thousand Five-Hundred Dollars (\$2,500.00) during such year. Payment shall be made within thirty (30) days of the Entry Date, and within thirty (30) days after any additional Site Inspection, as applicable. The payment shall be made via check, made payable to: "Los Angeles Waterkeeper" via certified mail, return receipt requested to Los Angeles Waterkeeper, c/o Barak Kamelgard, 360 E 2nd Street Suite 250, Los Angeles, CA 90012. Failure to submit payment as required under this Paragraph will constitute breach of the Consent Decree.

F. ENVIRONMENTAL MITIGATION, LITIGATION FEES AND COSTS, MISSED DEADLINES, AND INTEREST

34. Environmental Mitigation Project. To fund environmental project activities that will reduce or mitigate the impacts of storm water pollution from industrial activities occurring in waters tributary to Alamitos Bay and San Pedro Bay, Defendants shall make a payment totaling Fifty Five Thousand Dollars (\$55,000.00) to the Rose Foundation made within thirty (30) days of the Entry Date, payable to the Rose Foundation for Communities and the Environment and sent via overnight mail to Rose Foundation, 201 4th Street, Suite 102, Oakland, CA 94607. Failure to submit payment as required under this Paragraph will constitute breach of the Consent Decree.

35. LA Waterkeeper's Fees and Costs. Defendants shall pay a total of Seventy-Two Thousand Dollars (\$72,000.00) to LA Waterkeeper to partially reimburse Plaintiff for their investigation fees and costs, expert/consultant fees and costs, reasonable attorneys' fees, and other costs incurred as a result of investigating

1 and filing the lawsuit, and negotiating a resolution of this matter within thirty (30)
2 days of the Entry Date. The payment shall be made payable to: Aqua Terra Aeris Law
3 Group and delivered by overnight carrier to 4030 Martin Luther King Jr. Way
4 Oakland, California 94609. Failure to submit payment as required under this
5 Paragraph will constitute breach of the Consent Decree.

6 36. Missed Deadlines. In the event that Defendants fail to submit to LA
7 Waterkeeper any payment, document, report, or communication required by this
8 Consent Decree, Defendants shall pay a stipulated payment of Five Hundred Dollars
9 (\$500). Such stipulated payments shall be made by check payable to: Rose
10 Foundation for Communities and the Environment, and such funds shall be used for
11 the sole purpose of funding environmentally beneficial projects, as described in
12 Paragraph 34. Payment shall be sent via overnight mail to Rose Foundation, 201 4th
13 Street, Suite 102, Oakland, CA 94607. Defendants agree to make the stipulated
14 payment within fourteen (14) days after the resolution of the event that precipitated
15 the stipulated payment liability.

16 37. Interest on Late Payments. Defendants shall pay interest on any
17 payments, fees, or costs owed pursuant to this Consent Decree that are not received
18 by the due date. The interest shall accrue starting the next business day after the
19 payment is due and shall be computed at a rate equal to the lower of: (i) 10% per year
20 (0.833% per month); or (ii) the maximum rate permitted by applicable law. Interest
21 shall continue to accrue daily on any outstanding balance until Defendants is current
22 on all payments then due under this Consent Decree, and shall be paid at the same
23 time that the payments, fees, or costs owed are paid to LA Waterkeeper. Interest on
24 late payments shall be paid by check payable to: Rose Foundation for Communities
25 and the Environment, and such funds shall be used for the sole purpose of funding
26 environmentally beneficial projects, as described in Paragraph 34. Payment shall be
27 sent via overnight mail to Rose Foundation, 201 4th Street, Suite 102, Oakland, CA
28 94607.

IV. DISPUTE RESOLUTION

38. This Court shall retain jurisdiction over this matter for the Term for the purposes of enforcing its terms and conditions, and adjudicating all disputes among the Parties that may arise under the provisions of this Consent Decree. The Court shall have the power to enforce this Consent Decree with all available legal and equitable remedies, including contempt.

39. Meet and Confer. Either party to this Consent Decree may invoke the dispute resolution procedures of this Section IV by notifying the other party in writing of the matter(s) in dispute and of the disputing party's proposal for resolution. The Parties shall then meet and confer in good faith (either telephonically or in person) within ten (10) days of the date of the notice in an attempt to fully resolve the dispute no later than thirty (30) days of the meet and confer.

40. Settlement Conference. If the Parties cannot resolve the dispute within thirty (30) days of the meet and confer described in Paragraph 39, the Parties agree that the dispute may be submitted for formal resolution by filing a motion before the United States District Court for the Central District of California. The Parties agree to request an expedited hearing schedule on the motion.

41. In resolving any dispute arising from this Consent Decree before the Court, the prevailing Party shall be entitled to seek fees and costs incurred pursuant to the provisions set forth in Section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d), and applicable case law interpreting such provisions, or as otherwise provided for by statute and/or case law.

V. MUTUAL RELEASE OF LIABILITY AND COVENANT NOT TO SUE

42. Plaintiff's Waiver and Release of Defendants. In consideration of the above, upon the Effective Date of this Consent Decree, Plaintiff, on its own behalf and on behalf of its officers and directors, release Defendants, their officers, directors, managers, employees, members, parents, subsidiaries, divisions, affiliates, successors

1 or assigns, agents, attorneys and other representatives, from and waives all claims
2 that were raised in the 60-Day Notice Letter and/or the Complaint up to and including
3 the Termination Date of this Consent Decree.

4 43. Defendants' Waiver and Release of Plaintiff. In consideration of the
5 above, upon the Effective Date of this Consent Decree, Defendants, on their own
6 behalf and on behalf of their officers, directors, employees, parents, subsidiaries,
7 affiliates and each of their successors or assigns, release Plaintiff, its officers and
8 directors, from and waives all claims related to the 60-Day Notice Letter and/or the
9 Complaint up to and including the Termination Date of this Consent Decree.

10 44. Nothing in this Consent Decree limits or otherwise affects Plaintiff's
11 rights to address or take any position that it deems necessary or appropriate in an
12 informal or formal proceeding before the State Board, Regional Board, EPA, or any
13 other judicial or administrative body on any matter relating to Defendants'
14 compliance at the Facility with the General Permit or the Clean Water Act occurring
15 or arising after the Effective Date.

16 **VI. MISCELLANEOUS PROVISIONS**

17 45. No Admission of Liability. The Parties enter into this Consent Decree
18 for the purpose of avoiding prolonged and costly litigation. Neither the Consent
19 Decree nor any payment pursuant to the Consent Decree shall constitute or be
20 construed as a finding, adjudication, or acknowledgement of any fact, law or liability,
21 nor shall it be construed as an admission of violation of any law, rule, or regulation.
22 Defendants maintain and reserves all defenses they may have to any alleged
23 violations that may be raised in the future.

24 46. Counterparts. This Consent Decree may be executed in any number of
25 counterparts, all of which together shall constitute one original document. Telecopy
26 and/or facsimile copies of original signature shall be deemed to be originally
27 executed counterparts of this Consent Decree.
28

1 47. Authority. The undersigned representatives for Plaintiff and Defendants
2 each certify that s/he is fully authorized by the party whom s/he represents to enter
3 into this Consent Decree. A Party's signature to this Consent Decree transmitted by
4 facsimile or electronic mail shall be deemed binding.

5 48. Construction. The language in all parts of this Consent Decree shall be
6 construed according to its plain and ordinary meaning, except as to those terms
7 defined in the Permit, the Clean Water Act, or specifically herein. The captions and
8 paragraph headings used in this Consent Decree are for reference only and shall not
9 affect the construction of this Consent Decree.

10 49. Full Settlement. This Consent Decree constitutes a full and final
11 settlement of this matter.

12 50. Integration Clause. This is an integrated Consent Decree. This Consent
13 Decree is intended to be a full and complete statement of the terms of the agreement
14 between the Parties and expressly supersedes any and all prior oral or written
15 agreements, covenants, representations, and warranties (express or implied)
16 concerning the subject matter of this Consent Decree.

17 51. Severability. In the event that any provision, paragraph, section, or
18 sentence of this Consent Decree is held by a court to be unenforceable, the validity of
19 the enforceable provisions shall not be adversely affected.

20 52. Choice of Law. The laws of the United States shall govern this Consent
21 Decree.

22 53. Diligence. Defendants shall diligently file and pursue all required permit
23 applications for any required BMPs and shall diligently procure contractors, labor,
24 and materials needed to complete all BMPs by the required deadlines.

25 54. Effect of Consent Decree. Compliance with this Consent Decree does
26 not mean that Defendants are complying with the General Permit, the Clean Water
27 Act, or any other law, rule, or regulation.
28

1 55. Negotiated Settlement. The Settling Parties have negotiated this Consent
2 Decree, and agree that it shall not be construed against the party preparing it, but shall
3 be construed as if the Settling Parties jointly prepared this Consent Decree, and any
4 uncertainty and ambiguity shall not be interpreted against any one party.

5 56. Modification of the Consent Decree. This Consent Decree, and any
6 provisions herein, may not be changed, waived, discharged, or terminated unless by a
7 written instrument, signed by the Parties and approved by the Court. Any request to
8 modify any provision of the Consent Decree, including but not limited to any
9 deadline(s) set forth herein, must be made in writing at least fourteen (14) days before
10 the existing deadline(s) applicable to the provision(s) proposed to be modified.

11 57. Assignment. Subject only to the express restrictions contained in this
12 Consent Decree, all of the rights, duties and obligations contained in this Consent
13 Decree shall inure to the benefit of and be binding upon the Parties, and their
14 successors and assigns. Defendants shall notify Plaintiff within ten (10) days of any
15 assignment.

16 58. Force Majeure. Neither of the Parties shall be considered to be in default
17 in the performance of any of their respective obligations under this Consent Decree
18 when performance becomes impossible due to a Force Majeure event. A Force
19 Majeure event is any circumstance beyond a Settling Party's control, including
20 without limitation, any act of God, war, fire, earthquake, flood, windstorm, pandemic,
21 public health crisis, or natural catastrophe; criminal acts; civil disturbance, vandalism,
22 sabotage, or terrorism; restraint by court order or public authority or agency; or action
23 or non-action by, or inability to obtain the necessary authorizations or approvals from
24 any governmental agency. A Force Majeure event shall not include normal inclement
25 weather, economic hardship, inability to pay, or employee negligence. Any party
26 seeking to rely upon this Paragraph to excuse or postpone performance shall have the
27 burden of establishing that it could not reasonably have been expected to avoid the
28 Force Majeure event and which by exercise of due diligence has been unable to

1 overcome the failure of performance. The Parties shall exercise due diligence to
2 resolve and remove any Force Majeure event.

3 59. Correspondence. All notices required herein or any other correspondence
4 pertaining to this Consent Decree shall be, the extent feasible, sent via electronic mail
5 transmission to the e-mail address listed below, or if electronic mail is not feasible,
6 then by certified U.S. mail with return receipt, or by hand delivery to the following
7 addresses:

8
9 If to Plaintiff:

10 Los Angeles Waterkeeper
11 Barak Kamelgard
12 Benjamin Harris
13 Madeleine Siegel
14 360 E 2nd St., Suite 250
15 Los Angeles, CA 90012
16 Email: barak@lawaterkeeper.org
17 Email: ben@lawaterkeeper.org
18 Email: madeleine@lawaterkeeper.org
19 Phone: (310) 394-6162

20 With copies to:

21 Jason Flanders
22 4030 Martin Luther King Jr. Way
23 Oakland, CA 94609
24 Email: jrf@atalawgroup.com
25 Phone: (916) 202-3018

If to Defendants:

Shawn A. Smith
Chief Executive Officer
Kelterite Corporation
12231 Pangborn Ave.
Downey, CA 90241
shawn@kelterite.com

John A. Smith
Chief Executive Officer
Kelterite Company, LLC
12240 Woodruff Ave.
Downey, CA 90241

With copies to:

Tracy J. Egoscue
Egoscue Law Group, Inc.
3834 Pine Ave.
Long Beach, CA 90807
Email: tracy@egoscielaw.com
Phone: (562) 988-5978

23 Notifications of communications shall be deemed submitted three (3) days after the
24 date that they are postmarked and sent by first-class mail, or immediately after
25 acknowledgement of receipt via email by the receiving party. Any change of address
26 or addresses shall be communicated in the manner described above for giving notices.

27 60. If for any reason the Federal Agencies should object to entry of this
28 Consent Decree or to any portion of this Consent Decree or the Court should decline

1 to approve this Consent Decree in the form presented, the Parties shall use their best
2 efforts to work together to modify the Consent Decree within thirty (30) days so that
3 it is acceptable to the Federal Agencies or the Court. If the Parties are unable to
4 modify this Consent Decree in a mutually acceptable manner that is also acceptable
5 to the Court, this Consent Decree shall immediately be null and void as well as
6 inadmissible as a settlement communication under Federal Rule of Evidence 408 and
7 California Evidence Code section 1152.

8
9 The Parties hereto enter into this Consent Decree and submit it to the Court for
10 its approval and entry as a final judgment.

11 IN WITNESS WHEREOF, the undersigned have executed this Consent Decree
12 as of the date first set forth below.

13
14 APPROVED AS TO CONTENT

15
16
17 Dated: _____, 2024

By: _____
Bruce Reznik
Executive Director
Los Angeles Waterkeeper

18
19
20
21 Dated: _____, 2024

By: _____
Shawn A. Smith
Chief Executive Officer
Kelterite Corporation

22
23
24 Dated: _____, 2024

By: _____
John A. Smith
Chief Executive Officer
Kelterite Company, LLC

25
26
27
28 APPROVED AS TO FORM

AQUA TERRA AERIS LAW GROUP

Dated: _____, 2024

By: _____
Jason Flanders
Attorney for Plaintiff
Los Angeles Waterkeeper

EGOSCUE LAW GROUP, INC.

Dated: _____, 2024

By: _____
Tracy J. Egoscue
Attorney for Defendants
Kelterite Corporation
Kelterite Company, LLC

IT IS SO ORDERED.
FINAL JUDGMENT

Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between the Plaintiff and Defendants.

Dated: August 19, 2024

CENTRAL DISTRICT OF CALIFORNIA



Dale S. Fischer
United States District Judge